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Pro Hac Vice

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Attorneys for Plaintiff
FIREMAN'S FUND INSURANCE COMPANY,
a foreign corporation a/s/o BASIC RESOURCES, INC.
and GEORGE REED, INC., a foreign corporation

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

FIREMAN'S FUND INSURANCE
COMPANY, a foreign corporation
a/s/o BASIC RESOURCES, INC.
and GEORGE REED, INC., a foreign
corporation,

Plaintiff,

vs.

GERLING AMERICA INSURANCE
COMPANY, a foreign corporation,

Defendant.

CASE NO. C 07 06302 CRB

**THIRD SUPPLEMENTAL DECLARATION
OF JON D. DERREVERE WITH RESPECT
TO REQUEST FOR JUDICIAL NOTICE
(D.E. 36-1) AND IN SUPPORT OF
PLAINTIFF'S FIREMAN'S FUND
INSURANCE COMPANY, REPLY TO
DEFENDANT'S GERLING AMERICA
INSURANCE COMPANY OPPOSITION
(D.E. 82) TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND FOR ALL
OTHER PURPOSES (D.E. 58) [F.R.C.P. 56]**

Hearing Date: August 8, 2008

Time: 10:30 a.m.

Courtroom: 8

TO: THE HONORABLE COURT AND TO DEFENDANT AND COUNSEL OF RECORD:

I, JON D. DERREVERE, declare as follows:

**THIRD SUPPLEMENTAL DECLARATION OF JON D. DERREVERE WITH RESPECT TO REQUEST FOR
JUDICIAL NOTICE (D.E. 36-1) AND IN SUPPORT OF PLAINTIFF'S FIREMAN'S FUND INSURANCE
COMPANY, REPLY TO DEFENDANT'S GERLING AMERICA INSURANCE COMPANY OPPOSITION
(D.E. 82) TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND FOR ALL OTHER PURPOSES
(D.E. 58) [F.R.C.P. 56]**

1 1. I am an attorney at law duly admitted to practice in the State of Florida, and have
2 been granted the privilege to appear before this Court pro hac vice on behalf of the Plaintiff,
3 FIREMAN'S FUND INSURANCE COMPANY a/s/o BASIC RESOURCES, INC. and GEORGE
4 REED, INC. ("FFIC").

5 2. I am a principal in the law firm of Derrevere, Hawkes & Black.

6 3. I am over the age of twenty-one. I am otherwise sui juris. I have personal knowledge
7 of the facts contained herein and if called upon to do so, I could and would testify competently
8 thereto.
9

10 4. At all times material, I have acted as lead counsel for Plaintiff FFIC in the
11 "Underlying Action", entitled "FIREMAN'S FUND INSURANCE COMPANY, a foreign
12 corporation as Subrogee of (a/s/o) BASIC RESOURCES, INC. and GEORGE REED, INC.,
13 foreign corporations vs. GENCOR INDUSTRIES, INC., a foreign corporation, Case No.: 2004-CA-
14 7746, In the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida". I
15 litigated this case through a jury trial which resulted in a Verdict for FFIC. Based on the Verdict, an
16 Amended Final Judgment was entered in favor of FFIC as well as a Final Judgment awarding costs.
17 True and correct copies of The Judgments are attached to the Fourth Amended Complaint in this
18 action (D.E. 29, 29-2 and 29-3). Herein, FFIC has sued Defendant GERLING AMERICAN
19 INSURANCE COMPANY ("GERLING"), which at all times material, was the liability carrier for
20 the Defendant, in the Underlying Action, "GENCOR". FFIC sues GERLING seeking declaratory
21 relief and damages for GERLING's breach of contract [its insurance policy insuring GENCOR at
22 all times material (D.E. 29-1)] for GERLING's failure to pay FFIC, as the victorious plaintiff in the
23
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27 THIRD SUPPLEMENTAL DECLARATION OF JON D. DERREVERE WITH RESPECT TO REQUEST FOR JUDICIAL
28 NOTICE (D.E. 36-1) AND IN SUPPORT OF PLAINTIFF'S FIREMAN'S FUND INSURANCE COMPANY, REPLY TO
DEFENDANT'S GERLING AMERICA INSURANCE COMPANY OPPOSITION (D.E. 82) TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND FOR ALL OTHER PURPOSES (D.E. 58) [F.R.C.P. 56]

Underlying Action, those Judgment awards entered against GERLING's insured pursuant to the terms of the subject GERLING policy (D.E. 29, 29-1, 29-2, 29-3).

5. Pursuant to Federal Rule of Evidence 201, FFIC has requested the Court take judicial notice of certain court records identified in my first Declaration [D.E. 36-1] in my First and Second Supplemental Declaration [D.E. 49-2, 56-2] and herein of the Initial Brief filed/served in the pending Appeal in the Underlying State Court Action to assist the Court in its consideration of Plaintiff's Motion for Summary Judgment and to enable Plaintiff to comply with Civ.L.R. 7-5. I, Jon D. Derrevere, declare that incorporated herein by reference and/or attached hereto as Exhibit 1 is a true and correct copy of the Initial Brief filed by GERLING's defense counsel for and on behalf of its insured, the underlying defendant. The Underlying Appeal is styled: "Gencor Industries, Inc. v. Fireman's Fund Insurance Company a/s/o Basic Resources, Inc. and George Reed, Inc." Appellate Case No.: 5D07-2157.

6. I, Jon D. Derrevere further declare that oral argument in the Appeal proceeded as scheduled on Wednesday, July 23, 2008. GERLING's defense counsel appeared on behalf of their insured, the defendant in the Underlying State Court Action.


I declare under penalty of perjury that the foregoing is true and correct under the laws of the United States. Executed on this 24th day of July 2008 in West Palm Beach, Florida.

JON D. DERREVERE

STATE OF FLORIDA:

COUNTY OF PALM BEACH:

THIRD SUPPLEMENTAL DECLARATION OF JON D. DERREVERE WITH RESPECT TO REQUEST FOR JUDICIAL NOTICE (D.E. 36-1) AND IN SUPPORT OF PLAINTIFF'S FIREMAN'S FUND INSURANCE COMPANY, REPLY TO DEFENDANT'S GERLING AMERICA INSURANCE COMPANY OPPOSITION (D.E. 82) TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND FOR ALL OTHER PURPOSES (D.E. 58) [F.R.C.P. 56]

 **FRANCES E. MINCHEW**
MY COMMISSION # DD 893099
EXPIRES: July 19, 2011
Bonded Thru Notary Public Underwriters

THIRD SUPPLEMENTAL DECLARATION OF JON D. DERREVERE WITH RESPECT TO REQUEST FOR JUDICIAL NOTICE (D.E. 36-1) AND IN SUPPORT OF PLAINTIFF'S FIREMAN'S FUND INSURANCE COMPANY, REPLY TO DEFENDANT'S GERLING AMERICA INSURANCE COMPANY OPPOSITION (D.E. 82) TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND FOR ALL OTHER PURPOSES (D.E. 58) [F.R.C.P. 56]

PROOF OF SERVICE

Fireman's Fund Ins. Co. v. Gerling American Ins.

United States District Court, Northern District of California

Case No.: C 07 06302 CRB

I am employed in the City and County of West Palm Beach, State of Florida. I am over the age of 18 and not a party to the within action; my business address is: Derrevere, Hawkes & Black, 470 Columbia Drive, Building "B", West Palm Beach, Florida 33409.

On July 24th, 2008, I served the foregoing document(s) described as:

THIRD SUPPLEMENTAL DECLARATION OF JON D. DERREVERE WITH RESPECT TO REQUEST FOR JUDICIAL NOTICE (D.E. 36-1) AND IN SUPPORT OF PLAINTIFF'S FIREMAN'S FUND INSURANCE COMPANY, REPLY TO DEFENDANT'S GERLING AMERICA INSURANCE COMPANY OPPOSITION (D.E. 82) TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND FOR ALL OTHER PURPOSES (D.E. 58) [F.R.C.P. 56]

On the interested parties in this action by placing [] the original [X] a true copy thereof enclosed in a sealed enveloped addressed as stated below:

[X] BY REGULAR MAIL:

I caused such envelopes to be deposited in the United States Mail at West Palm Beach, Florida with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service each day and that practice was followed in the ordinary course of business for the service herein attested to.

[X] BY ECF:

I HEREBY CERTIFY that on this 24th day of July, 2008, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on: TINO X. DO, Barger & Wolen, LLP, 650 California Street, 9th Floor, San Francisco, CA 94108, tdo@barwol.com and CHARLES K. BRUNN, Brunn & Flynn, 928 12th Street, Suite 200, P.O. Box 3366, Modesto, CA 95354, CBrunn@Brunn-Flynn.com via transmission of Notices of Electronic Filing generated by CM/ECF.

[X] FEDERAL - I declare that I am employed in the office of a member of the Florida Bar, admitted to practice in all Florida Courts and who makes this Pro Hac Vice Application, that our co-counsel and sponsor is a member of the bar of this California Court, and at their direction this service was made. Executed at West Palm Beach, Florida on July 24th, 2008.

NAME: *Deanna N. Menendez*

Signature: *Deanna N. Menendez*

THIRD SUPPLEMENTAL DECLARATION OF JON D. DERREVERE WITH RESPECT TO REQUEST FOR JUDICIAL NOTICE (D.E. 36-1) AND IN SUPPORT OF PLAINTIFF'S FIREMAN'S FUND INSURANCE COMPANY, REPLY TO DEFENDANT'S GERLING AMERICA INSURANCE COMPANY OPPOSITION (D.E. 82) TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND FOR ALL OTHER PURPOSES (D.E. 58) [F.R.C.P. 56]